IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO 5442 OF 1991

Shri Baburao Laxman Kshatriya
(deceased) by his L.R.
Smt. Kesharbai Baburao Kshatriya ..Petitioner.
residing at 378, Bhavani Peth,
Pune.

V/s.

Shri Balaji Mandir Trust
Registered Office at 377,
Bhavani Peth, Pune by
Trustee:

1. Saradar Munnasingh Kirad
   Occupation Business,
   Residing at 107/108, Timber
   Market, Pune-2.

2. Baliramji Ratnaji Kachi,
   Occupation service,
   Residing at 278, Mahatma Phule
   Peth, Pune-2.

3. Krishnanath Chotarmji Pardeshi,
   Occupation-service,
   Residing at 139, Bhavani Peth,
   Pune-2.

4. Puranshingh Tuljaram Kachi,
   Occupation-Trade, Residing
   at 89,Raviwar Peth, Pune-2.

5. Pandurangseth Vithaji Kirad,
   Occupation-Trade, Residing at
   365, Nana Peth, Pune-2.

6. Pantharam Ganpatji Banwari,
   Occupation-Trade, Residing
   at 663 Vetal (Gurwar) Peth,
   Pune-2.

7. Ramchandra Banduji Kachi,
   Occupation-Trade, residing at

475, Vetal Peth, Pune-2.

8. Rambhau Kishanji Bhagat,
Occupation-Trade, Residing at
275, Mangalwar Peth, Pune-11.

9. Sundarlalji Baburaoji Dimbar,
49 years, Occupation-Trade,
Residing at 101, Raviwar Peth,
Pune-2.

10. Vithal Dada Kachi,age 55 years,
Occupation-Trade, Residing at 101,
Raviwar Peth, Pune-1.

11. Vasant Aburao Pardeshi,
Occupation-Trade, Residing
at 251/1, Nana Peth, Pune-2.

12. Nandlal Deepchand Kirad,
Occupation-Nil, Residing at
C/o Chimanlal Pandurang Kirad,
R/o Khadakvasala, Tal. Haveli,
Dist. Pune. ..Respondents.

(Writ Petiion stands dismissed for want of prosecution as against respondents No.4,5,11 and 12 vide Addl. Registrar's order dated 16/2/1998)

Mr. R.M. Pethe i/b Mr. B.R. Phatak for the petitioner.
Mr. S.J. Rairkar for Respondents No. 1,2,3,7,8,9, and 10.

CORAM : ANOOP V.MOHTA J.

DATE : 19TH JULY, 2005.

ORAL JUDGMENT

. The present petition is by the sub-tenant who sought to challenge the concurrent findings given by the Courts below, whereby the landlord's suit for possession

has been decreed.

2. Heard the learned Counsel Mr. R. M. Pethe, appearing for the petitioner and the learned Counsel, Mr. Rairkar appearing for the respondents. Both the courts, after considering the material on the record, including the evidence led by the parties, arrived at a conclusion that the petitioner-sub tenant was not in occupation, prior to 1st February, 1973, and therefore, there was no question of granting protection and specially of Section 15 (A) of the Bombay Rents Hotel and Lodging Houses Rates Control Act, 1947 (for short Bombay Rent Act).

3. The learned Counsel appearing for the petitioner, basically contended that this case falls within the ambit of section 5 sub-section (11), Section 15(1)(a) and not under Section 15A of the Bombay Rent Act. In support of his submission, apart from the provisions of Bombay Rent Act, he relied on **1990 Bombay R. C., 172 (Ramesh Narayan Mahajan V. Hari Ganesh Pandit) and also 2003 (1) Bom. C. R. 738 (Krishanaji Ganesh Vaidya V. Triveniben Anant Virkar Shete and others)**. The learned Counsel has further relied

heavily on his own evidence, thereby, he stated that he is in occupation of the premises since 1972. He further relied that the original tenant-defndnat No.1 left the premises some time in the year 1963. Based on the same, the respondent-landlord has invoked the provisions of Bombay Rent Act and issued the notice for termination of the tenancy also on the ground of arrears of rent.

4. The requirement, as contemplated under the Bombay Rent Act to get the protection of provisions of section 15(A) and or section 15(1) (A) is that the parties claiming the protection, must be in occupation of the premises prior to 1st February, 1973. In the present case, except bare words of the petitioner, there is no other supporting material to justify his claim of occupation of the premises prior to 1st February, 1973. These concurrent findings if taken note of, I see there is no case made out by the petitioner-tenant, to consider this submission as is referred above.

5. As rightly pointed out by the learned Counsel appearing for the respondent that Ramesh (Supra) case deals with the facts, where party agreed, that the occupation of the premises was, with the sub-tenant,

since the year 1963-64. That is not the case here. There is a dispute so far as possession and its relevant dates for the purpose of taking protection under the Act. In Krishnaji (Supra), the case is also related to

the occupation of a person prior to 1/2/1973, even though, it was unlawful. This is not the case in hand.

6. For the above reasons, I am not inclined to interfere with the findings given by the Courts below. There is no case to interfere with the judgment and decree passed by the Court for possession.

7. In view of this, the petition is dismissed. Rule discharged. Interim stay vacated. No order as to cost.

[ANOOP V. MOHTA, J.]